

On November 15, 2004 I met with several employees of the Wireline Competition Bureau to discuss matters related to the E-Rate program and appeals before the Commission. The following document was presented to meeting attendees. All other documents discussed are part of public filings with the Commission.

Greg Weisiger  
November 15, 2004

## **Possible Solution to E-Rate Program Suspension/Slowdown**

E-Rate funding commitments have been suspended since August 3. The SLD has announced that funding will resume shortly, but only to the extent that funds are available to cover dollars requested. It is anticipated that forthcoming commitments for Year 2004 will be relatively small. Unless the reasons for the accounting issues can be resolved, applicants that have passed PIA review may not receive commitment letters before July 2005 – the start of Funding Year 2005.

Interested parties have expressed support for legislation to exempt Universal Service programs from some federal accounting regulations. Some parties, particularly within the Commission, expressed the idea that a “soft-commitment” letter would suffice until funds are available to cover commitments.

A legislative fix would be the magic bullet to get the program back on track; however enacting legislation could be a lengthy process and not a “quick fix” imagined by proponents of this idea.

The soft-commitment notion is being roundly rejected by the applicant and vendor communities as unworkable.

The FCC must instruct the Administrator to begin working on an alternative plan to get commitment letters to as broad a population of E-Rate applicants as possible. Monthly commitment letters is one such solution. Because the bulk of commitments and covered services represent monthly recurring charges, the SLD could issue commitment letters covering a single month of covered services. These monthly commitment letters would be covered by monthly contributions from carriers. When carryover funds are applied to future commitments, additional monthly commitments could be issued, or recurring services with one-time charges could be funded. After sufficient funds have been secured for all Priority One services, Priority Two services could be funded. The monthly commitment program would work like this:

Priority One (excluding One-Time charges):

Once an application has been reviewed by PIA and the monthly recurring charges have been established, the SLD will issue a commitment letter once a month. Once a commitment letter has arrived with monthly funding, applicants can count (with some

certainty) that a new letter will arrive the following month and so on until the entire amount is funded.

High discount applicants who rely on discounts to continue service would be able to do so. Vendors would be assured that funds are on hand to pay the discounted portion of funding requests.

Priority Two and Priority One that include One-Time Charges:

Once all Priority One services have been funded, about the third quarter (when carryover money flows in), SLD should have enough cash on hand to start committing requests for Internal Connections and P1 services that include One-Time charges.

FRNs would have to be renumbered such that the monthly commitment letter could be easily tracked and not be subject to a dozen 486 filings. True, P2 services would have to wait much longer to be funded but at least money gets flowing to the core users of the program.

## **Filing of Paperwork with Kansas and Subsequent Lost Papers**

Before the Commission are a number of appeals from applicants that were denied funding because of missed deadlines or had applications rejected because submissions delivered to the Kansas contractor allegedly did not contain all required pages.

Some disturbing decisions from the FCC ruling in essence that applicants must prove submissions to Kansas actually contain all documents – almost impossible, unless applicants have each and every envelope notarized with respect to content. King Salmon, AK is the latest.

The sub-contractor of the Administrator of the program has a well documented history of losing and misplacing paperwork.

- The “Pink Postcard” issue: some 700 applications were rejected for failing to file certification pages in Year Two. Kansas had lost or misfiled the paperwork
- Winston-Salem Forsyth County Public Library: Winston Salem actually numbered each page of their submission. Application was rejected and returned to applicant. Pages were returned out of order and pages were missing. FCC ruled in favor of Winston Salem only because Kansas ultimately “found” the missing page (DA 02-2565).
- Chesapeake Public Schools (2004): Chesapeake filed two certifications in the same envelope. One was accepted the other apparently lost. SLD ruled favorably on appeal.

In denying appeals filed by applicants, the FCC cites “...well established law that the absence of an official record of an event is evidence of the non-occurrence of the event”

(FCC decision in New Rochelle School District issued November, 6, 2002 citing precedent in the Application of Herbert L. Rippe, 44 FCC Rcd 91).

The FCC cannot rely on precedent in Herbert L. Rippe for denying an application based on the absence of evidence. Rippe pertained to the filing of official documents with an agency of the federal government – the Federal Communications Commission - with established and reliable procedures for receiving and documenting correspondence filed. In these cases, documents are filed with a subcontractor of a not-for-profit company established under FCC order. The federal government apparently has no oversight or control over the subcontractor. Further, the subcontractor has a documented history of misplacing, losing, and improperly rejecting documents filed by E-Rate applicants.

If an applicant asserts it has filed a document with the subcontractor, based on the documented inconsistent handling of paperwork by the subcontractor, the presumption of proper filing must rest with the applicant.

### **King and Queen Application for Review**

King and Queen County Schools filed a Form 471 for Funding Year Three with the SLD. The Form was rejected for failing to meet minimum processing standards. Specifically, Block 1, Item 1; and Block 5, Item 22 of the Form were left blank.

King and Queen appealed the rejection. The Common Carrier Bureau denied the appeal, ruling that the Item 22 omission clearly fell under the conditions of Naperville, but the Block 1, Item 1 did not. King and Queen appealed to the full Commission, arguing that Block 1, Item 1 fell under the intervening Asociacion de Educacion decision, DA 01-2290 and previously established Methacton decision. King and Queen did not argue the Item 22 issue, as the CCB had already decided that issue in King and Queen's favor.

The full Commission did not rule on the Block 1, Item 1 issue. Rather, the Commission revisited the Item 22 omission, decided at the CCB and denied the appeal on that basis.

Finally, each year the Minimum Processing Standards of the Form 471 have become less and less restrictive, following Commission decisions in individual cases. The Minimum Processing Standards of the draft 2005 Form 471 indicate applicants are required to supply in Block 1 *either* Item 1, billed entity name *or* Item 3, billed entity number. In Block 4 there is no mention at all of Item 22. King and Queen supplied Item 3, billed entity number in their application.

We ask the Commission to reconsider that Order.

The application in question covers eligible services that were necessary for the education of King and Queen students. It was purchased from a state master contract at reasonable prices and in accordance with state and local procurement regulation.

## **Virginia Department of Education Petition for Reconsideration**

Two appeals for identical reasons are currently before the FCC and SLD.

- FCC was unable to find relevant material at SLD when rendering decision (DA 02-1123 at 9).
- Relevant material was contained in first appeal to SLD (Petition for Reconsideration Attachment 7), and was referenced in second appeal here under petition for reconsideration. First appeal, dated December 22, 1999 remains at SLD pending FCC action on this Petition for Reconsideration.
- First appeal contained substantial facts concluding Autotote provided telecommunications on a “common carrier” basis. Second appeal referenced the first appeal, containing the facts.
- During review FCC visited Autotote website and concluded Autotote did not offer telecommunications services on a common carrier basis. Autotote website was vastly different in 2002 compared to 1999 and 2000 when DOE contracted for services.
- Statements in Autotote Securities and Exchange filings remove ANY question regarding the common carrier status of Autotote. Not only was Autotote a common carrier, it provided interstate service and may have to contribute to the program.